

DELTA PROTECTION COMMISSION

14215 RIVER ROAD
P.O. BOX 530
WALNUT GROVE, CA 95690
PHONE: (916) 776-2290
FAX: (916) 776-2293



DRAFT

Minutes of the Meeting of the Delta Protection Commission
6:30 p.m. Thursday, November 21, 1996
Jean Harvie Community Center
14273 River Road, Walnut Grove

1. Call to Order/Roll Call.

The meeting was called to order at 6:40 p.m. Commissioners in attendance were: Broddrick, Calone, Curry (arrived 6:45), Freeman, Herendeen, Acting Chair Nottoli, Potter, Salmon, Simas, and Yates. Absent were: Vice Chair Fargo, Ferreira, Chairman McCarty, McGowan, Mello, Murphy, Sekelsky, Thomson and Torlakson.

2. Public Comments.

There were no public comments.

3. Minutes of October 24, 1996 Meeting. (NOTE: This item was taken up after item #5, when a quorum was reached.)

There were no comments or corrections. On a motion by Commissioner Calone and a second by Commissioner Herendeen, the draft minutes were adopted by voice vote.

4. Chairman's Report.

Acting Chairman Nottoli noted that the next meeting of the Delta Protection Commission is scheduled for Thursday, December 19, 1996 at 6:30 p.m. in the Jean Harvie Community Center. Tentatively scheduled for consideration are a vote on the City of Stockton's proposed General Plan amendment and review of the Commission's annual report to the Governor and Legislature.

5. Attorney General's Report.

Richard Frank reported that the final touches were being added to the regulation file for submittal to Office of Administrative Law. He also noted a new article about use of sludge and passed around a copy.

6. Executive Director's Report.

Margit Aramburu said the 10% Penalty Fund is up to \$3,219.62; an agricultural waterfowl incentive program by US Fish and Wildlife Service and Bureau of Reclamation will provide incentives for farmers to flood their fields for appropriate time periods during the year for the benefit of migratory waterfowl; a CALFED workshop on Ecosystem Restoration will be held on December 10 at Jean Harvie, and a CALFED workshop on levees will be held on December 17 at Jean Harvie.

Acting Chairman Nottoli asked if the Commissioners would receive notices of those meetings; Ms Aramburu said she would contact CALFED to ensure that the Commissioners receive notices.

7. Pending Projects Memo.

There were no questions or comments of staff.

8. Public Hearing on Proposed Amendment to the City of Stockton General Plan.

Ms Aramburu noted that the planning staff of the City of Stockton had submitted a proposed amendment to the City of Stockton's General Plan to bring that General Plan into conformance with the Commission's adopted Plan. The Planning Commission reviewed and approved the proposed amendment at their meeting of November 14, 1996. Consideration by the City Council has not yet been scheduled, but staff is attempting to schedule consideration before the end of the year.

She said the proposed amendment is simple and straightforward and states that future changes to the City's General Plan and Zoning Code for lands in the Primary Zone shall be consistent with the goals of and comply with the Commission's adopted Plan. She noted that only the sewage treatment ponds and a small parcel partially developed with a warehouse are in the Primary Zone. She noted that the policies of the Plan would not require a change from the zoning that was in place on January 1, 1992. She added that no one from the City was able to attend.

Acting Chair Nottoli asked for Commission questions.

Commissioner Potter asked about the order of City and Commission actions; Ms Aramburu said the City had not formally submitted acted upon the application and review is proceeding at the City. She noted that the language in the staff report is the proposal being considered.

Acting Chair Nottoli opened the public hearing; there were no speakers. The public hearing was closed.

There was a motion by Commissioner Simas and a second by Commissioner Freeman to direct staff to prepare a staff recommendation for consideration at the next Commission meeting.

Commissioner Curry asked about the City's process and how that might affect Commission action on the proposed General Plan amendment; Ms Aramburu commented that the Commission is required to review and concur with the proposed General Plan amendment; the City's amendment process is a separate process. She said the only problem would be if the City does not continue with the actual amendment process; the Commission has no way to force the City to proceed with the General Plan amendment.

Commissioner Freeman noted that the recommendation would be linked to the City submitting their proposal formally.

Commissioner Yates asked if a new public hearing would be required if the City modifies the language; Mr. Frank said a new public hearing would be required only if the changes were substantive. He added that the Delta Protection Act anticipated local governments submitting proposed amendment language for review, then returned to the local government for final action. He added that the proposed process appears in compliance with the Act.

The motion directing staff to prepare a recommendation was approved by voice vote.

9. Briefing and Consideration of Position on Hunting on East Bay Regional Park District Water-Covered Lands in Big Break, Contra Costa County.

Ms Aramburu stated that at the last meeting Commissioner Calone raised concerns about EBRPD's policy restricting hunting on its newly acquired lands at Big Break in Contra Costa County. She noted she had prepared a staff report which summarized the situation to date.

She said Bob Doyle at EBRPD told her that the District has acted to control access to the upland portions of Big Break; i.e. people were driving on the District lands and parking without permission. In addition, there were blinds accessible from the upland areas via boardwalks; those boardwalks have been removed to protect the District from possible liability. Mr. Doyle said hunting from a boat in the water-covered areas would be allowed by the District in conformance with State law. He said there had been no questions asked about seasonal use

of floating blinds in the water areas, and that the District had no policies about that type of use. Mr. Doyle did raise concerns associated with the changing nature of the lands surrounding Big Break, noting that new houses are being built in the area, changing the nature of the shoreline from rural to suburban.

She added that State Lands Commission legal counsel, Jane Sekelsky, indicated there may be some State public trust interest on some of the lands at Big Break. However, no detailed analysis has been carried out to date and none is planned. She indicated that hunting on water covered lands is consistent with public trust uses, but a responsible agency can manage public trust lands as deemed necessary to protect public health and safety.

Ms Aramburu said she had talked with DFG warden, Jackie Krug, who said that hunting on land requires the permission of the landowner. If the landowner does not allow hunting, NO HUNTING signs must be posted for DFG to enforce. If hunters access a water-covered area by boat via waterways, the DFG would not issue tickets. She did not have any information about blinds in the water areas. Ms Krug said she understood that the blinds in the water areas would be allowed to remain this hunting season, but only floating blinds would be allowed next year--meaning no pilings would be allowed between the blind and the mud below the blind.

She added that Bob Doyle, apologized that no one could attend tonight's meeting and he had suggested that if the Commission needs more information, a future briefing by District staff could be scheduled.

Commissioner Calone said he had talked to several hunters who had said that the District was going to destroy all blinds at the end of this hunting season. He referred to the letter of 1992, and commented that the several existing floating blinds should be allowed to remain on site and be used in the future. He acknowledged that there are houses in the area, and added that the blinds are at least a mile from the houses and beebees only travel one to one hundred and twenty five yards. Commissioner Calone added a concern that the Park District could create a safety issue if new boardwalks are built into the area where the blinds are located. He noted there are not many public locations available for hunting, and noted that the Plan supports hunting as a recreational use. He said he is not satisfied with the District's position about the future of the floating blinds; he wants the floating blinds to be allowed to remain. He urged the Commission to express that concern to the District.

Acting Chair Nottoli suggested it may be helpful to have a representative come before the Commission to clarify issues of concern.

Commissioner Calone said that in the April 1994 letter from the District said hunting would be allowed to continue and noted that there prohibition on hunting is also attached to the staff report.

Commissioner Herendeen suggested that a representative of the Commission go before the EBRPD Board to express the Commission's concerns.

Commissioner Freeman asked if the Board members attended the Commission meeting or made the statements about continued hunting; Commissioner Calone noted the letter was signed by the General Manager, not a Board member. Commissioner Freeman said it might be effective to go before the Board.

Commissioner Broddrick commented that historically EBRPD has protested hunting on or adjacent to their park lands. He noted that the solution may be to seek agreement to allow continuation of the use of the floating blinds consistent with State law. He agreed that the design of public improvements will be very important to ensure that the public is not endangered. He agreed that the District has the right to not allow blinds that rest on the **land**, but said there is a right to have floating blinds. He said the Department staff will be meeting with the District to clarify the situation now and in the future.

Commissioner Potter asked about the legal difference between staked and floating blinds; Commissioner Broddrick said if the blinds are floating and anchored they are not considered permanent.

Commissioner Potter said he is very concerned about the inconsistency between the District's earlier letter and position and current actions. He said the situation between the Commission and the District has been mishandled and says if the continued hunting use at Big Break is appropriate, the Commission should support that use.

Commissioner Broddrick said the issue of hunting on the District lands is entirely up to the Board.

Commissioner Freeman suggested it may not be appropriate to take any action without a representative of the District present.

Commissioner Potter encouraged the Chair to write a letter to the District.

Ms Aramburu suggested several options for action including requesting additional information; send staff on a site visit; inviting District staff to the DPC meeting; sending a representative to the District Board meeting; or direct staff to meet with District staff and

DFG to discuss future development of the site. She noted that the staff supervising the site has now seen the 1994 letter. She noted there is hunting from blinds on Frank's Tract on State lands.

Chuck Dahl said he has hunted at Big Break for 12 years and was asked by the other hunters to come speak to the Commission. He said in 1995, the District said they may build a boardwalk. He said all the blinds, but one, are floating blinds; the blinds are like a boat. The blinds are left out all year. He said it takes about four months to set up the area around the blind to prepare for hunting season. He said there has been a decline in habitat values due to water hyacinth and other plants. He agreed that the most important issue is public safety. He commented that District staff has not been out to see the blinds. He supports opening a line of communication between District staff and the hunters. He commented on the educational values of the site. He said there are only five floating blinds and one staked blind.

Commissioner Calone noted that the hunters clear the exotic plants to create duck habitat.

Commissioner Broddrick asked if Mr. Dahl would talk to the regional manager to help clarify the situation; Mr. Dahl agreed.

Commissioner Potter asked how hunting was in Big Break; Mr. Dahl said not too good, but the point is not to kill ducks, its to experience nature and the environment.

Commissioner Curry asked about the exotic plants in the area; Mr. Dahl said there is some grass so dense its blocking boats and limiting fish habitat; Dutch Slough is free of grasses; the problems are on the south side of the break. Commissioner Curry asked if the hyacinth crews were out; Mr. Dahl said he sees them from time to time.

Commissioner Calone suggested notifying EBRPD of the Commission's position that someone messed up this year prohibiting hunting in direct opposition to the earlier written position, and suggested more communication with the Board, not the staff.

Commissioner Broddrick said the staff is just reflecting the positions of the Board; the Board does not support hunting on any of its lands.

Commissioner Potter suggested DPC staff, District staff, and DFG staff attempting to work out an agreement.

Acting Chair Nottoli summarized that two actions should take place: first a letter of concern regarding the violation of the understanding communicated to the Commission in the 1994 letter and asking for a meeting to clarify continued hunting use from floating blinds, and second, a meeting between staffs to try to work out an agreement regarding park development which will allow continued hunting use from the floating blinds. Commissioner Broddrick suggested that Brian Hunter be the representative of the DFG.

On a motion by Commissioner Broddrick and a second by Commission Calone, staff was so directed by unanimous voice vote.

10. Briefing on Phase One of Study of Volume of Material and Costs to Bring Delta Levees to Corps' PL-99 Standard.

Ms Aramburu said in February 1996 the Commission directed staff to research the issue of how much material and the costs of that material would be required to bring Delta levees to the Corps' PL-99 standard, the standard recommended in the Commission's Plan. The information would help determine the costs and time needed to bring the levees to this standard. She thanked the engineering firms and DWR staff for helping her gather the information. The staff report before you summarizes staff actions to this end and the findings of this research.

She noted that studies have been prepared for Lower Jones, Lower Roberts, Palm and Orwood; two additional studies are planned. She noted that most of the Delta levees are at the HMP standard. Only two tracts have met the PL-99 standard; neither are in the Primary Zone. She said the cost is high; if there is a current survey, the rest of the analytical work is about \$8,000 to \$9,000 per island. Aramburu said the Commission's Levee Subcommittee heard a report on this from staff at the October Subcommittee meeting and suggested that the cost of preparing detailed island by island cost estimates, as described by Dante Nomellini of Central Delta Water Agency, was too steep for the Commission's budget. The Levee Subcommittee suggested writing a letter to CALFED to see if they are interested in a more specific study at this time.

She talked to CALFED staff (Curt Schmutte) in response to her letter to Lester Snow dated October 28, 1996. He said that CALFED is only preparing general estimates to levee work because CALFED is preparing only program-level analysis at this time. To this end, they have settled on some estimated costs and volumes. They will be using the cost estimate of \$5 per cubic yard for levee construction material and an estimate of 100,000 cubic yards of material per mile of levee to meet PL-99. That results in a rough cost of \$500,000 per levee mile.

At this point, the Commission would have to carry out further studies at a very limited rate, or assume that CALFED would carry out more detailed studies in the future.

Commissioner Potter asked if staff had talked to the Corps about long-term Delta levee issues and an amendment to a cost-sharing agreement for a study phase; Ms Aramburu said she had obtained information from the Corps based on earlier, 1982 studies. She agreed to contact the Corps about possible future levee studies. Commissioner Potter questioned why CALFED is not pursuing the levee studies at this time.

Commissioner Curry asked for clarification of the estimated figures to be used by CALFED. She noted that this figure does not include engineering, mitigation, permitting, or other associated costs; only the material. He asked if that volume of material can be placed on the levees.

Chris Neudeck, KSN Inc., said 100,000 cubic yards is a conservative estimate, taking into account subsidence and would be phased, starting with constructing a berm. They just constructed a complete setback levee on Twitchell Island which covered 3,000 feet using 145,000 cubic yards. In some situations subsidence will affect the volume needed and he described a Twitchell Island project. He said he has a problem with the \$5 per cubic yard; that is based on readily available material or dredged fill; to import fill would be approximately three times that amount. Mr. Neudeck said they now use instruments to monitor placement of fill.

Commissioner Broddrick asked how the priorities are set for this work; Mr. Neudeck said there is 65 feet of water adjacent to the Twitchell Island levee, a unique situation.

Commissioner Calone asked if the fill was dredged or imported fill; Mr. Neudeck said the fill was imported, except a small amount of dry material from the Clifton Court forebay. He added that on Bishop Tract, they placed about 100,000 cubic yards of fill for an urban levee using instrumentation and it worked very well. Commissioner Calone asked about the cracks on Twitchell; Mr. Neudeck said its the old levee.

Commissioner Curry asked about the GPS (Global Positioning System) technology to monitor elevational changes; Mr. Neudeck said there was a study 4-5 years ago which was inconclusive; GPS uses satellites to measure elevation. The study data was published and then withdrawn; there is no uniform application of GPS, that should be USGS. Commissioner Curry asked who is the expert; Mr. Neudeck said his surveyors use the technology.

Commissioner Potter said there must be agreement on a datum; Mr. Neudeck said DWR is monitoring movement of peats, which appear to rise and lower in elevation with the tides.

Ms Aramburu said she would pursue available information and specifically call the Corps, bring this matter to the attention of CALFED at the workshop on the December 17.

11. Consideration and Possible Adoption of Position of Support for San Joaquin County's Proposed Sludge/Biosolids Ordinance.

Ms Aramburu said San Joaquin County staff has prepared a draft ordinance regulating application of sludge through out the County. The draft ordinance includes a prohibition on placement of sludge in the Primary Zone of the Delta, and the language is consistent with P-3, which the Commission recently adopted. The Commission should determine if it would like to take a position of support for that portion of the proposed ordinance which is in conformance with the Commission's adopted policy and regulation. She suggested that if the Commission wants to support the proposed County ordinance, she could draft a letter for the Chair to send to the County Board of Supervisors.

Commissioner Simas urged support of the draft ordinance. Commissioner Simas so moved, seconded by Commissioner Calone.

Acting Chair Nottoli asked for public comments. There were none.

Commissioner Potter asked counsel for advice on what type of position the Commission could take on a proposed local ordinance; Mr. Frank said there is no problem commenting on the adoption of the proposed ordinance; the Commission's position would be advisory only and not subject to further review by the Commission.

Acting Chair Nottoli noted that the proposed action is consistent with recent Commission's actions.

The motion was approved unanimously by voice vote.

12. Commissioner Comments.

Commissioner Curry announced additional federal and State funds available for grants to public and private facilities to install equipment for boat sewage disposal. He urged the Commission to support install these grants. Ms Aramburu noted Sacramento County staff has been very interested in working with Boating and Waterways to help marinas apply for these funds. She said the Commission would continue to promote the program. Acting Chair Nottoli suggested sending the

information to the environmental health departments. Commissioner Broddrick asked if there are conditions of public access; Commissioner Curry said he was not aware of that type of condition and added that a reasonable fee can be charged.

13. Adjourn.

The meeting was adjourned at 8:05 p.m.